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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
JAMES T. FRAZIER,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 83-52

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a Washington State Department of Ecology Report of Examination and Order denying Ground Water Permit Application No. G4-27917, came before the Pollution Control Hearings Board, Larry Faulk, presiding officer, for formal hearing on August 9, 1983, in Wenatchee, Washington. The proceedings were recorded by Joan M. Steichen.

Appellant, James T. Frazier of Brewster, Washington, represented himself. Respondent, Department of Ecology (DOE), was represented by Wick Dufford, Assistant Attorney General for DOE at Olympia,

1 Washington.

2 Witnesses were sworn and testified. Exhibits were admitted and
3 examined. Oral and written argument were taken into the record. The
4 proposed order of the presiding officer was served on both parties.
5 Exceptions to the proposed order were filed by DOE. The full Board,
6 having considered the entire record, including the transcript of the
7 oral testimony, and having granted the exceptions, now makes these

8 FINDINGS OF FACT

9 I

10 On April 30, 1982, appellant filed Application No. G4-27917 with
11 DOE to appropriate public ground waters. Public notice was made, and
12 the 30-day protest period expired with no protests to granting this
13 request being received by DOE.

14 II

15 Application No. G4-27917 requested 80 gallons per minute (gpm)
16 from a well for irrigation of 20 acres. This water was to be used on
17 appellant's 20-acre parcel located in the N 440 feet of the S 1/2 of
18 the SE 1/4 and the S 440 feet of the N 1/2 of the SE 1/4 of Section
19 11, Township 31 N., Range 24 E.W.M. except the E 660 feet thereof, in
20 Okanogan County.

21 However, appellant now wishes to irrigate only 6 acres. During
22 the summer months this parcel is rotated as grazing area for cattle.

23 III

24 Appellant's parcel lies 6.5 miles north of the town of Brewster on
25 the floor of a 1.25 square mile drainage basin. This is the uppermost

26 FINAL FINDINGS OF FACT,
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1 in a series of southerly sloping sequentially completed basins. The
2 glacial outwash provides a limited ground water reservoir which is
3 recharged solely by local precipitation.

4 IV

5 The average annual precipitation in the Brewster area is 10.3
6 inches. About two-thirds of the annual precipitation falls during the
7 non-irrigation season (October to March).

8 The mean annual temperature at Brewster is 50⁰ F, based on 19
9 years of record from 1918 to 1936. Evapo-transpiration during the
10 April through October period each year is generally greater than
11 precipitation during the same period. Excess moisture (precipitation
12 in excess of evapo-transpiration) occurring during the winter months
13 provides substantially all of the water available for recharge to
14 ground water.

15 The amount of precipitation which contributes to the ground water
16 supply on the 1.25 square mile basin is that which infiltrates to the
17 water table. This is dependent upon the soil type, slope, vegetation,
18 condition of the ground when precipitation occurs, the rate at which
19 precipitation occurs, and climatic conditions when it occurs.

20 It is expected that the average recharge to the ground water
21 supply is approximately 40 acre-feet per year. Due to the limited
22 extent of the watershed and large difference in precipitation from
23 year to year, the recharge in any single year may deviate
24 significantly from the estimated long term average recharge.

25 There may be springs in the drainage basin. The source of water
26 would be from the recharge available in the basin.

At present, there are three certificates of water right within the basin:

(a) Certificate G4-25492C--James Wick--for 41 acre feet per year (40 to be used during irrigation season to irrigate 10 acres and one to be used continuously for stockwatering).

(b) Certificate G4-25457C--Ralpn Hagy--for 44 acre feet per year to be used during irrigation season to irrigate 12 acres.

(c) Certificate 8802--Roscoe Pickett--for 32 acre feet per year for the irrigation of 8 acres and .01 cfs for domestic supply (made supplemental to Certificate G4-25457C by terms of the latter).

Additionally two more acre feet per year have been recommended for approval in response to Ground Water Application No. G4-26896 for domestic supply, stockwater and heat exchange. There are, thus, three senior certificates and one senior pending application within the basin.

Further, there are two other known existing water uses in the basin for domestic supply which are not represented by an application, permit or certificate. One is Mr. Wick's domestic well which is within the exemption of the Ground Water Code, and probably amounting to a use of about two acre feet per year. The other is the appellant Frazier's own spring, upon which no water right claim was filed pursuant to chapter 90.14 RCW.

Excluding Mr. Frazier's present spring usage, there are, thus, a total of 89 acre feet per year (41 + 44 + 2 + 2) presently authorized for withdrawal in a basin which has 40 acre feet of annual recharge.

Two prior requests (other than appellant Frazier's) for additional irrigation water have been denied by DCL. The department is not sure

1 how much of the water is actually used. Such use varies from year to
2 year and upon many other variables.

3 VI

4 Appellant utilizes his spring for domestic supply and some
5 stockwatering. Some seven to eight gallons a minute flows from this
6 spring which is said to have never gone dry.

7 VII

8 On December 1, 1982, representatives of DOE conducted a field
9 investigation on appellant's parcel in order to determine whether to
10 approve or deny his application. A report of examination was filed
11 and approved by the department's regional supervisor. The conclusions
12 reached in the reports stated that during normal years, the ground
13 water availability is less than what is needed to satisfy existing
14 rights. The DOE determined that if the appellant's proposed use was
15 developed, it would have an adverse effect on existing rights and
16 granting this permit would be contrary to the public interest.
17 Application No. G4-27917 was denied on April 15, 1983.

18 VIII

19 Feeling aggrieved by the decision of DOE, appellant filed an
20 appeal with this Board on April 26, 1983, and the matter came to
21 formal hearing.

22 IX

23 The question to be decided by this Board is whether DOE was
24 correct in denying appellant's application for irrigation of 20 acres.

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
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Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact, the Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the persons and subject matter of this proceeding. RCW 43 212.110

II

The legislature has found that, subject to existing rights, all waters within the state belong to the public and any right thereto shall be acquired by appropriation for a beneficial use and in the manner provided and not otherwise. As between appropriators, the first in time shall be the first in right. RCW 90.03.010.

III

Chapter 90 14 RCW deals with the regulation of public ground waters. RCW 90.44.020. The application procedure for the appropriation of public ground water is defined in RCW 90.44.060. Appellant has followed the proper application procedure.

IV

RCW 90.03.290, made applicable by RCW 90.14.060, provides in part:

When an application complying with the provisions of this chapter and with the rules and regulations of the supervisor of water resources has been filed, the same shall be placed on record in the office of the supervisor, and it shall be his duty to investigate the application, and determine what water, if any, is available for appropriation, and find and determine to what beneficial use or uses it can be applied. If

1 it is proposed to appropriate water for irrigation
2 purposes, the supervisor shall investigate, determine
3 and find what lands are capable of irrigation by
4 means of water found available for appropriation. . .
5 . The supervisor shall make and file as part of the
6 record in the matter, written findings of fact
7 concerning all things investigated, and if he shall
8 find that there is water available for appropriation
9 for a beneficial use, and the appropriation thereof
10 as proposed in the application will not impair
11 existing rights or be detrimental to the public
12 welfare, he shall issue a permit stating the amount
13 of water to which the applicant shall be entitled and
14 the beneficial use or uses to which it may be
15 applied: Provided, That where the water applied for
16 is to be used for irrigation purposes, it shall
17 become appurtenant only to such land as may be
18 reclaimed thereby to the full extent of the soil for
19 agricultural purposes. But where there is no
20 unappropriated water in the proposed source of
21 supply, or where the proposed use conflicts with
22 existing rights, or threatens to prove detrimental to
23 the public interest, having due regard to the highest
24 feasible development of the use of the waters
25 belonging to the public, it shall be duty of the
26 supervisor to reject such application and to refuse
27 to issue the permit asked for. If the permit is
refused because of conflict with existing rights and
such applicant shall acquire same by purchase or
condemnation under RCW 90.03.040, said supervisor may
thereupon grant such permit. Any application may be
approved for a less amount of water than that applied
for, if there exists substantial reason therefor, and
in any event shall not be approved for more water
than can be applied to beneficial use for the
purposes named in the application. In determining
whether or not a permit shall issue upon any
application, it shall be the duty of the supervisor
to investigate all facts relevant and material to the
application. . . .

V

The burden of proof is on the appellant to show that DOE's
decision was in error.

VI

Appellant failed to present persuasive evidence and argument which

1 | could result in his meeting his burden of proof. The department, on
2 | the other hand, presented ample testimony which affirmatively showed
3 | that 1) there was no unappropriated water available for additional
4 | irrigation use, 2) existing right would be impaired if the proposed
5 | appropriation was allowed, and 3) the public welfare would be
6 | substantially and detrimentally affected if existing rights and the
7 | regulatory and management scheme used by the department were ignored.

8 | VII

9 | The denial of application No. 64-27917 should be affirmed.

10 | VIII

11 | Any Finding of Fact which should be deemed a Conclusion of Law is
12 | hereby adopted as such.

13 | From these Conclusions the Board enters this
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26 | FINAL FINDINGS OF FACT,
27 | CONCLUSIONS OF LAW & ORDER
28 | PCB No. 63-52

ORDER

The Washington State Department of Ecology Order denying Application No. G4-27917 for a permit to appropriate public ground water is affirmed.

DATED this 29th day of September, 1983.

POLLUTION CONTROL HEARINGS BOARD

David Akana
DAVID AKANA, Lawyer Member

Gayle Rothrock
GAYLE ROTHROCK, Chairman

Lawrence J. Faulk
LAWRENCE J. FAULK, Member